

**VSH Futures Advisory Committee**  
**March 26, 2007 2:00 – 4:30 PM**  
**Skylight Conference Room, Waterbury**

**Minutes**

**Next meeting:**       **May 7, 2007 2:00 p.m. to 4:30 p.m.**  
                             **Skylight Conference Room**  
                             **State Office Complex, Waterbury**

Present

Deputy Commissioner for Mental Health Michael Hartman

**Advisory Committee Members:** Jackie Leman, advocate; Kitty Gallagher, Adult State MH Program Standing Committee; Ron Smith, DOC; Jeff Rothenberg, CMC; Jack McCullough, MHLPP; Sally Parrish, advocate; Conor Casey, VSEA; Paul Dupre, WCMH, Vermont Council; Ed Paquin, VP&A; Larry Lewack, NAMI-VT; Michael Sabourin, advocate; Anne Jerman, VSH; JoEllen Swaine, VSH; Peter Albert, Retreat Healthcare; Ken Libertoff, VAMH; Linda Corey, VPS; Xenia Williams, advocate; David Fassler, VPA; Sandy Steingard, HCHS; Stan Baker, HCHS/DD/Autism Division. Also present, Jason Williams, FAHC (for Meg O'Donnell).

**Guests/Public:**

Donna Jerry, BISHCA; Rep. Anne Donahue, Counterpoint; Nick Emlen, Vt. Council

**Staff:**

Beth Tanzman, Judy Rosenstreich, Frank Reed, Bill McMains, Norma Wasko, Dawn Philibert, Brian Smith, VDH/DMH; Wendy Beininger and Jessica Oski, AAG/DMH; Terry Rowe, VSH.

Introductions and Updates

Deputy Commissioner Hartman welcomed members and guests. He described legislation under consideration at the State House, highlighting two bills:

- S.97 relating to correctional facilities. The bill, in part, calls for an interim study in 2007 to develop the data necessary for policy and program planning for the mental health treatment needs in Corrections.
- S.124 calls for a legislative evaluation of options for replacing the state hospital. It allocates a portion of the funds, \$100,000, authorized in 2006 for Futures project planning to enable an independent evaluation of options and costs by June.

Michael Hartman noted that, in both instances, the VDH/Division of Mental Health would provide information it has gathered to date and otherwise support the evaluation

process. On a related topic, the Corrections Inpatient Work Group of the Advisory Committee began its deliberations this month.

Beth distributed a series of Futures Briefs on key areas of the VSH Futures Project. The briefs provide a detailed overview of the (a) Planning Process, (b) Proposed Capacities in the Futures Plan, (c) Why Integrate Mental Health with General Health Care Services, (d) BISHCA Certificate of Need Process, (e) Capital Development Estimates from Conceptual CON Application, (f) Institute for Mental Disease Exclusion, (g) Second Spring Community Residential Recovery Program and (h) Mental Health SFY '08 Appropriation Request.

### **Governing Body of Vermont State Hospital**

Discussion began on two governance issues, one being the VSH governing body and the other concerned with the current status of the board of mental health. The Vermont State Hospital has a governing body, however, it is not established in statute or regulation. In its legal analysis of the VSH governing body, DMH has found that the State is restricted from sharing confidential information and issues with the body's public members; only State employees can have access to information that is confidential in nature. The other governance issue concerns the board of mental health, a board that has not been active in nearly a decade.

Wendy explained the DMH proposal to create a new VSH governing body through regulation. The membership, including three public members, would have authority and responsibility to approve the appointment of the hospital's chief executive officer, ensure provision of quality care, approve appointment of medical staff, monitor the hospital's annual budget and contracts for services, ensure publication of an annual community report, and address issues of the hospital's quality and effectiveness. The VSH governing body would establish bylaws to implement its authority and responsibility. In this proposal, the public members would have full access to the information provided to the governing body.

David asked if the governing body also would review critical incidents, receive reports on seclusion and restraints, and otherwise comport with JACHO requirements. Michael Hartman agreed that the governing body would fulfill JACHO standards.

Wendy clarified that the VSH governing body is a different issue from the board of mental health. The VSH governing body would, however, fulfill pieces of the board's historic role as it relates to Vermont State Hospital. Wendy stated that the statutory language for the board of mental health needs to be updated if the board is to become a functioning entity.

Discussion continued on the VSH governing body as well as the board of mental health.

Xenia and Ed each commented on the loss of certain oversight roles as not all board of mental health functions transferred to standing committees. They stated that the State standing committees are not regulatory and, therefore, cannot supplant the board of mental health. In addition, VSH has the most vulnerable population and the least oversight.

Ed observed that in response to the recent patient suicide at Fletcher Allen's inpatient psychiatry unit, two regulatory bodies came in to provide oversight---CMS and JACHO. Fletcher Allen's internal Quality Improvement/Quality Assurance process was also involved. From Protection & Advocacy's perspective, there is little institutional oversight for VSH. Contrast this with restaurant inspections and the oversight imposed on Fletcher Allen.

Michael Hartman asked if JACHO accreditation of the Vermont State Hospital might change the perspective that VSH lacks adequate external oversight. His preference is to first seek accreditation from JACHO as it is a more collaborative process than CMS.

Larry turned discussion toward examination of three proposals under consideration:

| VSH Governing Body             |                      | Vt. Board of Mental Health |
|--------------------------------|----------------------|----------------------------|
| Legitimize by                  |                      | (3) exists >>>>> populate  |
| (1) regulation<br>DMH proposal | (2) statute<br>H.448 |                            |

Larry compared advisory vs. binding authority: The board of mental health is binding where, in Larry's opinion, the VSH governing body would be only advisory. From his perspective, an advisory group has inherent limitations. Furthermore, he argued that particularly for an institution in crisis, having advice that can be ignored is insufficient. Making an analogy to the Fish and Wildlife Board, professional staff give input on management of the deer herd while the board decides the number of doe permits.

Larry summed up his preferred strategy of reconstituting the board of mental health.

Sandy questioned the implied conclusion of Larry's example, pointing out the Governor appoints the members of the Fish and Wildlife Board and is likely to appoint people who support his positions, so there is no perfect solution.

Wendy clarified that the Vermont Department of Health proposal for giving the VSH governing body authority and responsibility would make its decisions binding similar to the policy boards of other Vermont hospitals.

## PUBLIC COMMENT

Anne commented that the governing body proposed by the Department of Health is essentially advisory because its membership is composed of four State members and three public members, therefore, the public members can be outvoted. Secondly, that which is created by regulation has no sustaining value because its powers can be removed by regulation whereas a statute is more enduring.

### Discussion

Wendy pointed out that all members of the proposed governing body---employees of the State and members of the public---would have access to the same information, including such confidential information as in personnel decisions.

Michael Hartman raised the role of the Governor to set policy and implementation to point out the inherent conflict between a corporate model of governance with a board of directors and the Governor's authority over the executive branch.

Larry saw it differently. In his opinion, the role of a governing board does not take away from what a chief executive does day to day. Larry was concerned, however, that a VSH governing body *in addition to* a board of mental health would create parallel structures in which the VSH chief executive takes direction from two different boards in addition to the Governor.

Xenia shared her brief experience serving on the VSH governing body and agreed that it was time to begin nominating people for appointment. She understood the concern on the part of the administration about independent oversight, however, it is a good thing and it should reside within the board of mental health. She did not see a problem having a governing body of VSH as well as a board of mental health. She noted that other hospitals report to both their own boards of directors and to the Vermont Board of Health.

Jack suggested that the issues of the governing body and the board of mental health can be considered separately. He agreed that the statute for the board needs updating.

- David Fassler moved/ Michael Sabourin seconded that the Futures Advisory Committee endorse the concept of retaining the board of mental health.
- The makers of the motion accepted a friendly amendment to designate a small working group to develop specific detailed recommendations.

|                 |    |
|-----------------|----|
| Voting in FAVOR | 13 |
| OPPOSED         | 4  |
| ABSTENTIONS     | 3  |

The motion carried. Volunteers for the Board of Mental Health Work Group were: Jack McCullough, Xenia Williams, Wendy Beinmer, Larry Lewack, Jackie Leman, Michael Sabourin

- David Fassler moved/Michael Sabourin seconded that the Vermont State Hospital should have a governing body.

David explained that both a governing body for the state hospital and a board of mental health are appropriate much as we have a parallel structure in our health care system: the Board of Health licenses all other hospitals and they all have boards of directors.

Ken offered that it remains unclear why both the board of mental health and the governing body seem to have “died on the vine” and that the work group give this consideration in developing recommendations. He also voiced concern about the two entities potentially bogging the system down with competing and confusing lines of authority and accountability.

In further discussion, Wendy explained that a governing body would *govern* the state hospital, providing overarching policy direction above the level of day-to-day operations. A board of mental health would provide an *oversight* function.

The motion to have a governing body for the Vermont State Hospital was approved.

|             |    |
|-------------|----|
| FAVOR       | 17 |
| OPPOSED     | 1  |
| ABSTENTIONS | 2  |

Larry asked about the pending nominations to the VSH Governing Body that have not been acted upon.

- Larry Lewack moved/Kitty Gallagher seconded that the Advisory Committee recommends that Governor Douglas act upon the nominations before him for the VSH Governing Body.

Larry and Kitty accepted a friendly amendment from David to write a letter to the Governor on behalf of the Advisory Committee and to email the draft for review.

The motion to recommend action on the nominations carried.

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|-------------|----|
| FAVOR       | 18 |
| OPPOSED     | 0  |
| ABSTENTIONS | 1  |

### **SFY '08 Budget Discussion**

The VDH/DMH fiscal year 2008 proposed budget narrative was distributed. Beth also provided the Futures base allocations for FY 07 and the Governor’s budget proposal for FY 08 for community capacities, Futures staffing, consultation, and meeting expenses.

With the two documents for contextual background, Advisory members asked questions and offered comments. Xenia and Linda each asked about possible uses of current year's funds for existing capacities such as the Safe Haven program, which could potentially admit patients from VSH in a short time frame. Beth acknowledged the concern about using money intended for capacity enhancements to backfill existing structures.

Ed asked about the proposed funding for 42 beds at VSH; is that realistic given that the census has been higher? Michael Hartman explained that we have a significant residential program coming online, Second Spring, that makes it realistic to go to 42 beds at VSH. He added that the plan was not to close a floor at the state hospital but to use all the space to improve care.

Jeff expressed satisfaction at seeing programs coming online. He also offered his support for future funding to enhance emergency services, a priority identified by the Crisis Beds Work Group.

Sandy responded to a question about the Co-occurring Disorders Treatment Program (CODTP) that serves CRT clients who have active substance abuse problems and who are frequently incarcerated. This program is jointly funded by DMH, Corrections, and ADAP. Funding for these two programs was cut in the FY 08 budget proposal.

Looking at FY 07 and FY 08 combined, Ken stated that substantial progress has been made for the Futures project. People have continued to work juxtaposed with very difficult conversations here. Through it all, we have come out with a fiscal footprint that is a start that gets us moving in the right direction. We should be appreciative.

Michael Hartman added that the Futures staff have developed strong funding proposals that have withstood scrutiny. While this funding does not meet all needs, we can build pathways for greater collaboration between mental health and other systems.

Xenia stated that credit should go to Beth for putting the money together. Michael Hartman gets credit for Second Spring. The fact alone that we are now hiring *recovery* staff says a lot!

#### PUBLIC COMMENT

Anne commented on the legislature's review of the Future's budget, indicating that money for parts of the plan on which we have not had movement may be shifted.

#### **Proposed Resolution of Residential Treatment Facilities**

Jack distributed a revised version of the resolution discussed at the February meeting. There were few changes other than the resolved clause.

- Jack McCullough moved/Ed Paquin seconded to take up the resolution.

|             |    |
|-------------|----|
| FAVOR       | 17 |
| OPPOSED     | 0  |
| ABSTENTIONS | 0  |

- Jack McCullough moved/Ed Paquin seconded to adopt the resolution.

The makers of the motion accepted several friendly amendments.

For the sake of clarity in the resolved section, use the phrase, the "...State of Vermont should not *yield* to community opposition..." (Larry)

Current funding expectations are through fiscal year 08; it also is not realistic to plan and implement new residential facilities by the end of 2007 as the resolution states. Change to "...by the end of fiscal year 2008." (Paul)

Correct item #6, changing non-residential to residential.

In general discussion, Michael Sabourin asked why the resolution is needed. Ed responded that the resolution was worthwhile in that it puts a fairly narrow focus on something that the State needs to do, i.e., to look for a good site, a good community. He called the resolution a civil rights statement for people with disabilities.

Conor offered his view that there may be legitimate reasons for community opposition, for example, the community may feel that the State may not have met its financial obligations.

The question was called. The motion to adopt the resolution as amended in clauses 1, 2 and 6 was voted.

|            |  |
|------------|--|
| Clause # 1 | replace "accede" with "yield"            |
| Clause # 2 | end of 2007 to "end of fiscal year 2008" |
| Clause # 6 | "non-residential" to "residential"       |

|             |    |
|-------------|----|
| FAVOR       | 14 |
| OPPOSED     | 1  |
| ABSTENTIONS | 4  |

## PUBLIC COMMENT

Anne noted that Secretary LaWare was not in attendance and Commissioner Moffatt had not been present for the two most recent meetings, asking how information from the meeting would be transmitted.

Michael Hartman replied that Secretary LaWare was called away at the last minute and he will check with Sharon about her intentions for future attendance.

The committee adjourned at 4:30 p.m.

SUBMITTED BY: Judy Rosenstreich  
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